reme Court, U.S.
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No. 05-

IN THE

Supreme Court of the United States

BRIDGESTONE/FIRESTONE NORTH AMERICAN TIRE, L.L.C.,

Petitioner,

v.

CITY OF MONROE EMPLOYEES RETIREMENT SYSTEM,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether, contrary to the rule articulated by the Second Circuit in *In re Carter-Wallace, Inc. Securities Litigation*, 220 F.3d 36, 42 (2d Cir. 2000), a plaintiff sufficiently pleads the strong inference of scienter necessary to survive a motion to dismiss under the Private Securities Litigation Reform Act ("PSLRA") by alleging that a company expressed its belief in the safety of one of its products after it had received consumer product claims like those received by all product manufacturers, absent any alleged facts indicating that the company was actually aware, or recklessly unaware, of a product defect that caused those claims.

2. Whether, contrary to the rule in numerous other Circuits, allegations of commonly held motives, such as the desire of corporate officers to keep their jobs, may be considered in determining whether a complaint adequately pleads the strong inference of scienter required by the PSLRA in securities fraud cases.

3. Whether the PSLRA's required strong inference of fraudulent intent to deceive investors may be pled simply by coupling a commonly shared motive—such as a company's desire to maintain profitability—with allegations of product complaints that are routinely received by all companies manufacturing consumer products.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings in the court of appeals included Bridgestone Corporation ("Bridgestone"), Bridgestone/Firestone North American Tire, L.L.C. (as successor to Bridgestone/Firestone, Inc.) ("Firestone"), Yoichiro Kaizaki, Masatoshi Ono, and the City of Monroe Employees Retirement System. The decision below affirmed the trial court's judgment in favor of Yoichiro Kaizaki and Masatoshi Ono. As prevailing parties below, they do not have an interest in the outcome of this petition.

CORPORATE DISCLOSURE STATEMENT

Bridgestone/Firestone North American Tire, L.L.C. is a privately held corporation that has as its parent corporation Bridgestone Americas Holding, Inc., also privately held. Bridgestone Americas Holding, Inc. is a wholly owned subsidiary of Bridgestone, a publicly held Japanese corporation whose stock trades on the Tokyo Stock Exchange.

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PETITION FOR A WRIT OF CERTIORARI

Firestone respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.[1]

OPINIONS BELOW

The amended opinion of the court of appeals (Pet. App. 2a-68a) is reported at 399 F.3d 651. The opinion of the district court granting Firestone's Motion to Dismiss (Pet. App. 71a-119a) is unreported.

JURISDICTION

The district court had jurisdiction under the Securities and Exchange Act of 1934, 15 U.S.C. § 78aa, and 28 U.S.C. § 1331. The court of appeals had jurisdiction under 28 U.S.C. § 1291. The court of appeals entered its judgment on October 22, 2004. Firestone filed a timely petition for rehearing with suggestion for rehearing *en banc* on November 5, 2004. The court of appeals issued an amended opinion, with amended judgment, on February 4, 2005, and denied Firestone's timely, renewed petition for rehearing with suggestion for rehearing *en banc* on May 3, 2005. (Pet. App. 1a). This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

15 U.S.C. § 78j. Manipulative and deceptive devices

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange—

* * *

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[1] The Sixth Circuit's decision also should be reviewed for the reasons set forth in Bridgestone's Petition for a Writ of Certiorari, filed on August 1, 2005.

(b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, or any securities-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act), any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

15 U.S.C. § 78u-4(b)

(b) Requirements for securities fraud actions

(1) Misleading statements and omissions

In any private action arising under this chapter in which the plaintiff alleges that the defendant—

(A) made an untrue statement of a material fact; or

(B) omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading;

the complaint shall specify each statement alleged to have been misleading, the reason or reasons why the statement is misleading, and, if an allegation regarding the statement or omission is made on information and belief, the complaint shall state with particularity all facts on which that belief is formed.

(2) Required state of mind

In any private action arising under this chapter in which the plaintiff may recover money damages only on proof that the defendant acted with a particular state of mind, the complaint shall, with respect to each act or omission alleged to violate this chapter, state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind.

* * *

17 C.F.R. § 240.10b-5 Employment of manipulative and deceptive devices.

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

(a) To employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,

in connection with the purchase or sale of any security.

STATEMENT OF THE CASE

In 1995, Congress passed the Private Securities Litigation Reform Act ("PSLRA"), 15 U.S.C. § 78u-4(b)(2), which raised the bar for pleading securities fraud. Nonetheless, since that time plaintiffs have increasingly sought to leverage product problems identified by manufacturers into securities fraud cases. Such cases generally depend not on direct evidence that the company knew it was manufacturing a dangerous or defective product, but on the supposition that it should have known it, and should have disclosed it to investors, based on its receipt of customer complaints and a subsequent decision to conduct a product recall. This case presents but one example of the sort of products-liability-as-securities-fraud suits that are hitting drug manufacturers, chemical companies, automobile manufacturers, technology companies, and others with ever increasing frequency. The central question here is what the PSLRA requires plaintiffs to allege in order properly to plead the mandated "strong inference" of the required fraudulent state of mind in such cases—a question on which the court below rejected the

carefully reasoned approach applied by the leading circuit court decision on the issue.

A. Statutory Background

Section 10(b) of the Securities and Exchange Act of 1934 proscribes knowing, fraudulent conduct. This Court has recognized that "scienter" under §10(b) is a "mental state embracing intent to deceive, manipulate, or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 194 n.12 (1976). To impose liability, it requires "knowing or intentional misconduct." *Id.* at 197. In 1995, Congress concluded that even this stringent requirement had "not prevented abuse of the securities laws by private litigants." H.R. Conf. Rep. No. 104-369, at 41 (1995), *reprinted in* 1995 U.S.C.C.A.N. 730, 740. It specifically found that such suits—which this Court has held "present[] a danger of vexatiousness different in degree and in kind from that which accompanies litigation in general" (*Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 739 (1975))—"are often based on nothing more than a company's announcement of bad news, not evidence of fraud." S. Rep. No. 104-98, at 4 (1995), *reprinted in* 1995 U.S.C.C.A.N. 679, 683. To remedy this problem, Congress enacted the Private Securities Litigation Reform Act, which requires a securities fraud plaintiff to "state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind" with respect to each act or omission alleged to violate the securities laws. 15 U.S.C. § 78u-4(b)(2). Complaints that do not satisfy this requirement must be dismissed if the defendant so moves. *Id.*, § 78u-4(b)(3).

Under these standards, it is well established that plaintiffs may not base a securities fraud claim on mere negligence—even "inexcusable negligence." *In re Advanta Corp. Sec. Litig.*, 180 F.3d 525, 539 (3d Cir. 1999); *Broad v. Rockwell Int'l Corp.*, 642 F.2d 929, 961-62 (5th Cir. 1981) (en banc). Nor may plaintiffs base a claim on conclusions reached only after the alleged statements at issue: "allegations that

defendants should have anticipated future events and made certain disclosures earlier than they actually did do not suffice to make out a claim of securities fraud." *Novak v. Kasaks*, 216 F.3d 300, 309 (2d Cir. 2000). Thus, in the product context, the Second Circuit has held that where a company ultimately decides to withdraw a product from the market based on a causal connection between that product and consumer illnesses or deaths, that conclusion "cannot relate back to the time of the statements." *In re Carter-Wallace, Inc. Sec. Litig.*, 220 F.3d 36, 41 (2d Cir. 2000) ("*Carter-Wallace II*"). Instead, that circuit has held that the plaintiff must plead additional facts indicating that the company had drawn such a connection at the time the allegedly fraudulent statements were made or, at a minimum, had turned a "blind eye" to adverse reports. *Id.* at 42. Basing fraudulent intent simply on the company's later conclusion from the accumulated data and information it had about the product would reflect nothing more than an "impermissible attempt to plead 'fraud in hindsight.'" *Id.* (citation omitted). In the decision below, the court permitted just what *Carter-Wallace* would not.

B. The Underlying Facts of this Case

This litigation stems from Firestone's highly publicized August 2000 recall of certain ATX, ATX II, and Wilderness AT tires (collectively, "ATX tires") sold in large part as original equipment on the Ford Explorer sport utility vehicle. Firestone is a wholly owned subsidiary of Bridgestone, an $18 billion multinational Japanese corporation whose stock trades on the Nikkei stock exchange in Tokyo, Japan. Unsponsored American Depositary Receipts ("ADRs") trade on over-the-counter markets in the United States. After Firestone announced the recall of certain ATX tires on August 9, 2000, the price of Bridgestone's stock dropped significantly. (Cmpl. ¶¶ 9, 79). That drop prompted this suit.